THE HIGH COURT OF DELHI AT NEW DELHI

% Judgment delivered on: 17.07.2007

\+ **WP (C) 3343/2001**

SHRI HARBIR SINGH ...Petitioner

- versus -

LT GOVERNOR OF DELHI AND OTHERS ...Respondents

Advocates who appeared in this case:
For the Petitioner : Ms Sonali Malhotra Sehgal.
For the Respondent Nos.1-3. : Mr Sunil Bagai.

CORAM:-

HON'BLE MR JUSTICE BADAR DURREZ AHMED

1. Whether Reporters of local papers may be allowed to see the judgment ?

2. To be referred to the Reporter or not ?

3. Whether the judgment should be reported in Digest ?

BADAR DURREZ AHMED, J (ORAL)

1. The petitioner is aggrieved by the order dated 09.05.2001 passed by the Commissioner (Food and Supplies) whereby the petitioner's kerosene oil depot licence was cancelled.

2. The facts are that on 1.12.1999 the vacancy for a kerosene oil depot was notified in Circle 47, Ashok Nagar, Delhi. The last date for making applications was 15.12.1999. The petitioner applied on 15.12.1999. The respondent Nos. 4 and 5, namely, Rama Devi and Panchal were also co

applicants. However, on 19.01.2001, the licence was issued to the petitioner for running his KOD at E-30, Ashok Nagar, (Circle 47) Delhi. Since the applications of respondent Nos 4 and 5 were rejected and the same was communicated to them by a letter dated 22.01.2001, they filed appeals under the provisions of the Delhi Kerosene Oil (Export and Price) Control Order, 1962 (hereinafter referred to as the said "Control Order"). The appeals of the respondent Nos 4 and 5 were rejected. However, the case of the grant of licence to the petitioner was also considered by the Commissioner (Food and Supplies) and by virtue of the said order dated 09.05.2001, the licence granted to the petitioner was cancelled on the ground that the petitioner was not eligible for the grant of licence on the date of his application i.e., on 15.12.1999. The reason given for the cancellation of the petitioner's licence was that on that date the petitioner had two shutters in his shop when the rule required that there should have been only one shutter. A supplemental reason was also indicated in the order and that was that the graduation certificate given by the petitioner was suspect.

3. The learned counsel for the petitioner submitted that the entire case hinges upon the statement of Smt Sheela Devi who is the land lady of the subject premises. Apparently, she had stated that on 16.12.1999 an inspection was carried out on the part of the Food and Supplies Department at 10.55 a.m. and at that point of time there was only one shutter as the other shutter had been

closed and only 6 inches gap remained to be covered up. As per the statement, it appears that the second shutter was closed on 16.12.1999. However, according to the learned counsel for the petitioner, since the inspection was carried out at 10.55 in the morning, it would not be unreasonable to assume that the work for closing the shutter had commenced on 15.12.1999 itself and perhaps been completed on that date barring 6 inches which remained to be closed as noted by Smt Sheela Devi.

4. The learned counsel for the petitioner also pointed out that Smt Sheela Devi gave an affidavit on 01.05.2000 indicating that she was not at all aware of the contents of her statement given to the Food and Supplies officer and that she merely signed the document without knowing the actual contents thereof. In this context, the learned counsel for the petitioner submitted that not much reliance can be placed on the statement of Smt Sheela Devi and that is the only piece of evidence which the Commissioner of Food and Supplies relied upon to conclude that the petitioner was ineligible on the ground that on the date of the application there was two shutters in the shop in question.

5. The learned counsel for the respondent submitted that in the course of the appeals filed by the respondent Nos 4 and 5 the question of eligibility of the petitioner also came into consideration and it was found by the superior officer of the Food and Supplies Department that the petitioner was ineligible

on account of the fact that there were two shutters when there should have been only one and that it was in violation of condition No.1 printed in the application form itself. Therefore, no fault can be found in the impugned order.

6. The learned counsel for the respondent Nos 1 to 3 referred to the said control order and, in particular, to clause 5 thereof which related to the power to refuse to issue or renew a licence. He also referred to clause 8 which pertains to the provisions of appeal. In particular he referred to sub-clauses (4) & (5) of clause 8 which empower the Commissioner (Food and Supplies) to confirm, vary or set aside the order appealed from or pass such other order as he may deem fit. The Commissioner (Food and Supplies) was also empowered to revise any order passed by an Officer subordinate to him or review his own order either by an application or of his own motion. Therefore, according to the learned counsel for the respondents, the Commissioner (Food and Supplies) was within his power in cancelling the licence granted to the petitioner while hearing the appeals filed by the respondent Nos 4 and 5.

7. In rejoinder, the learned counsel for the petitioner submitted that the issuance or rejection of her licence or the renewal or non-renewal of her licence stood on an entirely different footing from suspension or cancellation of her licence. She submitted that clause 6 of the Control Order specifically provided for suspension and / or cancellation of the licence and the same could

only be done if there was a contravention of any of the terms and conditions of the licence or of any direction or provision of the control order itself. There was also a specific procedure prescribed before a licence could be cancelled as indicated in clause 6 of the Control Order itself. That has not been followed. According to her, the licence of the petitioner could not be cancelled in the manner it had been done.

8. This is the entire scope of the controversy between the petitioner and the respondents. However, I notice that clause 8 (6) of the Control Order specifically provides that any person aggrieved by the order of the Commissioner (Food and Supplies) passed by him either in his capacity as Commissioner or suo moto revising the order of an officer subordinate to him may prefer an appeal in writing before the Financial Commissioner, Delhi Administration, Delhi. The learned counsel for the petitioner submitted that this writ petition was filed before this court because at that point of time there was no Financial Commissioner and, therefore, left with no alternative, the present writ petition was filed. The learned counsel appearing on behalf of the respondents submits that there is a Financial Commissioner at present and at that time the officer who was appointed / to be appointed had not joined or was on leave. Although I have set out the arguments and counter arguments advanced by the counsel in detail, I deem it proper that an appeal be preferred before the Financial Commissioner inasmuch as certain factual issues are also

involved in this matter. However, while disposing of the appeal, if filed by the petitioner, the Financial Commissioner should be mindful of the arguments advanced before this court, particularly with regard to the distinction between the order accepting or rejecting an application for grant of licence and an order of cancellation of a licence after such a licence had been granted. Accordingly, this writ petition is disposed of with the direction that the petitioner may file an appeal before the Financial Commissioner within two weeks raising all the grounds that are available to the petitioner in respect of the cancellation of his licence by virtue of the order dated 9.5.2001. If such an appeal is filed within two weeks, the same shall be disposed of by the Financial Commissioner within eight weeks thereafter by a speaking order after giving an opportunity of hearing to the petitioner.

Dasti to both the parties.

BADAR DURREZ AHMED
(JUDGE)

July 17, 2007
M